

UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF CALIFORNIA

KEVIN MASSENGALE,

Plaintiff,

v.

KENNETH R. GREEN, JR. *et al.*,

Defendants.

Case No. 1:24-cv-00065-KES-CDB

FINDINGS AND RECOMMENDATIONS TO  
DISMISS PLAINTIFF’S COMPLAINT WITH  
PREJUDICE AND WITHOUT LEAVE TO  
AMEND

(Doc. 1)

**21-DAY DEADLINE**

Plaintiff Kevin Massengale (“Plaintiff”) is proceeding pro se and *in forma pauperis* in this civil rights action pursuant to 42 U.S.C. § 1983. (Docs. 1, 8). Plaintiff originally filed his complaint in the United States District Court for the Central District of California on December 19, 2023. (Doc. 1). The action was transferred to this Court on January 16, 2024, as venue is proper in the Eastern District of California. (Docs. 5-6).

**Screening Requirement**

Plaintiff, who is proceeding without counsel in this action, was granted status to proceed *in forma pauperis* in this action. (Doc. 8). *See* 28 U.S.C. § 1915(a) (authorizing the commencement of an action “without prepayment of fees or security” by a person who is unable to pay such fees). However, the determination that a plaintiff may proceed without payment of fees does not complete the Court’s inquiry. Pursuant to 28 U.S.C. § 1915(e)(2)(B), federal courts

1 must screen *in forma pauperis* complaints and dismiss any case that is “frivolous or malicious,”  
 2 “fails to state a claim on which relief may be granted” or seeks monetary relief against an immune  
 3 defendant. *See Lopez v. Smith*, 203 F.3d 1122, 1126-27 (9th Cir. 2000) (*en banc*) (“[S]ection  
 4 1915(e) not only permits but requires a district court to dismiss an [IFP] complaint that fails to  
 5 state a claim.”).

6 A complaint must contain “a short and plain statement of the claim showing that the  
 7 pleader is entitled to relief...” Fed. R. Civ. P. 8(a)(2). Detailed factual allegations are not  
 8 required but “[t]hreadbare recitals of the elements of a cause of action, supported by mere  
 9 conclusory statements, do not suffice.” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (citing *Bell*  
 10 *Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)). A complaint may be dismissed as a matter  
 11 of law for failure to state a claim for two reasons: (1) lack of a cognizable legal theory; or (2)  
 12 insufficient facts under a cognizable legal theory. *See Balisteri v. Pacifica Police Dep’t*, 901 F.2d  
 13 696, 699 (9th Cir. 1990).

14 Pleadings by self-represented litigants are to be liberally construed. *See Haines v. Kerner*,  
 15 404 U.S. 519, 520-21 (1972). However, “the liberal pleading standard . . . applies only to a  
 16 plaintiff’s factual allegations,” not his legal theories. *Neitzke v. Williams*, 490 U.S. 319, 330 n.9  
 17 (1989). Furthermore, “a liberal interpretation of a civil rights complaint may not supply essential  
 18 elements of the claim that were not initially pled,” *Bruns v. Nat’l Credit Union Admin.*, 122 F.3d  
 19 1251, 1257 (9th Cir. 1997) (internal quotation marks & citation omitted), and courts “are not  
 20 required to indulge unwarranted inferences.” *Doe I v. Wal-Mart Stores, Inc.*, 572 F.3d 677, 681  
 21 (9th Cir. 2009) (internal quotation marks & citation omitted).

## 22 **Plaintiff’s Allegations**

23 The Undersigned accepts Plaintiff’s allegations as true only for the purpose of the *sua*  
 24 *sponte* screening requirement under 28 U.S.C. § 1915.

25 On August 31, 2023, Plaintiff was arrested by Officer John Menser of the Kern County  
 26 Sheriff’s Department on a bench warrant for a failure to appear misdemeanor. (Doc. 1 at 19).  
 27 Later that same day, Magistrate Judge Kenneth Pritchard determined there was probable cause to  
 28 believe the arrestee had committed a crime. *Id.*

1 That same day, Plaintiff claims he made a “special visitation” to the Kern County Superior  
2 Court, Mojave Division related to a failure to appear misdemeanor from 2006 on behalf of the  
3 “Kevin Massengale estate.” (Doc. 1 at 8). Defendant “Magistrate Trustee Kenneth R. Green Jr.”  
4 (hereinafter “Judge Green”) called the failure to appear case and Plaintiff introduced himself as  
5 “Beneficiary the Authorized Representative.” *Id.* Judge Green told Plaintiff he could not  
6 represent himself without a bar number and asked him again if he was “Kevin Massengale.” *Id.*  
7 at 9. Plaintiff “repeatedly” claimed he was the “beneficiary the authorized representative.” *Id.*  
8 Judge Green then impaired Plaintiff from representing his “legal person.” *Id.* Further, Judge  
9 Green claimed Kevin Massengale had failed to appear, placed a \$50,000 bench warrant on  
10 Plaintiff, and told the bailiff to lock Plaintiff up. *Id.*

11 Thereafter, Plaintiff was detained for a week in a Kern County detention facility. *Id.* at  
12 10. On September 7, 2023, Plaintiff was brought back before the Superior Court and told he  
13 would “have to do 60 days in jail for a violation of probation.” *Id.* Plaintiff asserts he told the  
14 court he did not understand the charges because he already “suffered these charges” and  
15 completed counseling. *Id.* at 10-11. Defendants Arturo Revelo (“Revelo”), a public defender  
16 purportedly assigned to Plaintiff, and Defendant Judy Rogers (“Rogers”), a district attorney,  
17 recommended Plaintiff “see a psychic” [*sic*]. *Id.* at 11. Thereafter, Judge Green sentenced  
18 Plaintiff to 60 days for his “expired [failure to appear] misdemeanor from 2006.” *Id.*

19 Plaintiff was then sent to Kern County Sheriff Detention Facility in Bakersfield,  
20 California. *Id.* at 12. A sheriff booked Plaintiff and he received a “photo identification wristband  
21 with [his] personal information and name printed on it as Massengale Kevin not ‘Kevin  
22 Massengale.’” *Id.* Plaintiff appears to claim his surname and given name is his lawful name and  
23 Judge Green “unlawfully imprisoned” him for stating this in court. *Id.* at 12-13. Plaintiff also  
24 received from the sheriff a copy of the “Kern County-Arietis” signed by Officer Mesner and  
25 Judge Pritchard. *Id.* at 13. Plaintiff claims the “Arietis” contained fraudulent information that  
26 was used to incriminate and prosecute him. *Id.* Plaintiff asserts while in custody he was not  
27 provided his proper diet, despite filing multiple requests and grievances. *Id.* at 15, 20-21.

1 Plaintiff claims he was prohibited from purchasing any proper food for his diet from the store and  
2 had no option but to eat the food he was provided or starve. *Id.* at 15.

3 On December 19, 2023, Plaintiff filed the operative complaint. *Id.* Plaintiff argues  
4 Defendants Judge Green, Revelo, and Rogers (hereinafter collectively “Defendants”) deprived  
5 him of his constitutionally protected rights while acting in their individual and official capacities.  
6 *Id.* at 2-3, 5, 11. Specifically, Plaintiff alleges Defendants violated his Fourth, Fifth, Sixth,  
7 Eighth, Ninth, and Tenth Amendment rights, and the Supremacy Clause. *Id.* Next, Plaintiff  
8 claims Defendants caused genocide, extortion, slavery, and engaged in Racketeer Influenced and  
9 Corrupt Organizations Act (“RICO”) activities, conspiracy, kidnapping, wrongful imprisonment,  
10 and starvation. *Id.* at 4-5. Plaintiff also appears to assert a breach of contract claim against Judge  
11 Green for violating his oath of office. *Id.* at 23.

12 Plaintiff claims he suffered a “detrimental set back,” sickness, emotional distress, stress,  
13 duress, and trauma from Defendants’ actions. *Id.* at 4-5. Plaintiff requests “one million lawful  
14 dollars for each day [he] was unlawfully held against [his] will.” *Id.* at 6. Plaintiff asks for  
15 diplomatic immunity and recognition “as the holder of the United States debtor legal persons  
16 account, and not the *Ens Legis* itself.” *Id.* Plaintiff asks he be identified as an Aboriginal  
17 Indigenous to America and native to the Republic of California. *Id.* Lastly, Plaintiff asks all  
18 charges and convictions against his “legal person” be dismissed and expunged. *Id.*

## 19 **Discussion**

### 20 A. Frivolousness/Lack of Subject Matter Jurisdiction

21 As previously discussed (*supra* 1-2), under § 1915, the Court must dismiss the case if the  
22 action is frivolous or malicious. 28 U.S.C. § 1915(e)(2)(B). The Court lacks subject matter  
23 jurisdiction over frivolous cases. *See Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83,  
24 89 (1998) (holding federal courts lack subject matter jurisdiction to consider claims that are “so  
25 insubstantial, implausible, foreclosed by prior decisions of this court, or otherwise completely  
26 devoid of merit as not to involve a federal controversy.”); *Grancare, LLC v. Thrower by &*  
27 *through Mills*, 889 F.3d 543, 549-50 (9th Cir. 2018) (noting that the “wholly insubstantial and  
28

1 frivolous” standard for dismissing claims operates under Rule 12(b)(1) for lack of federal  
2 question jurisdiction).

3 A claim is legally frivolous when it lacks an arguable basis either in law or fact. *Neitzke*,  
4 490 U.S. at 325. A court may dismiss a claim as frivolous where it is based on an indisputably  
5 meritless legal theory or where the factual contentions are clearly baseless. *Id.* at 327; *Denton v.*  
6 *Hernandez*, 504 U.S. 25, 33 (1992); Fed. R. Civ. P. 12(h)(3). “[T]he frivolousness determination  
7 is a discretionary one” for the court. *Denton*, 504 U.S. at 33.

8 Here, although presented in terms of various constitutional, federal, and common law  
9 violations (*supra* 4), Plaintiff’s complaint is “replete with legal-sounding but meaningless  
10 verbiage commonly used by adherents to the so-called sovereign-citizen movement.” *United*  
11 *States v. Wunder*, No. 16-9452 (ES) (MAH), 2019 WL 2928842, at \*5 (D. N.J. Jul. 8, 2019).  
12 While many various sub-groups and ideologies may fall under the sovereign-citizen umbrella, the  
13 overarching unifying principle is the belief that, even though they physically reside in this  
14 country, the state and/or federal governments lack constitutional legitimacy and therefore have no  
15 authority to regulate their behavior. *Caetano v. Internal Revenue Serv.*, No. 1:22-cv-00837-JLT-  
16 SAB, 2023 WL 3319158, at \*2 (E.D. Cal. May 9, 2023) report and recommendation adopted,  
17 2023 WL 4087634 (E.D. Cal. Jun. 20, 2023); *Gravatt v. U.S.*, 100 Fed. Cl. 279, 282 (Fed. Cl.  
18 2011); *La Vell Harris v. Cnty. Of Lake*, No. 20-cv-09329-RMI, 2021 WL 2170138, at \*1 (N.D.  
19 Cal. May 10, 2021) report and recommendation adopted. *Harris v. Cnty. of Lake*, No. 20-cv-  
20 09329-HSG, 2021 WL 2170135 (N.D. Cal. May 25, 2021), appeal dismissed, No. 21-16054,  
21 2022 WL 17847243 (9th Cir. Nov. 18, 2022).

22 Here, all of Plaintiff’s claims arise from the contention that he was wrongly forced to  
23 appear and participate in proceedings before Defendant Judge Green and was detained because of  
24 those proceedings. (Doc. 1 at 4-5, 8-12, 14, 16). Plaintiff repeatedly refers to himself as  
25 Massengale, Kevin, a beneficiary or authorized representative of the Kevin Massengale estate.  
26 *Id.* While Plaintiff does not expressly state that he is a “sovereign citizen,” the Court finds  
27 Plaintiff’s allegations, explanations, and exhibits are all demonstrative of the fact that his claims  
28 are rooted in the sovereign citizen ideology. *See generally* (Doc. 1); *see Vasquez v. Cal. Highway*

1 *Patrol*, No. 2:15-cv-756-JAM-EFB (PS), 2016 WL 232332, at \*2 (E.D. Cal. Jan. 19, 2016)  
 2 (explaining “sovereign citizen” ideology); *Garcia v. Cnty. of Bucks*, No. 17-3381, 2018 WL  
 3 3585086, at \*2, n.3 (E.D. Cal. Jul. 25, 2018) (sovereign citizen plaintiff’s preferred signature on  
 4 court documents is a red thumbprint); *Pouncey v. Bryant*, No. 4:23-cv-03215-RBH, 2023 WL  
 5 5548591, at \*2, n. 3 (D.S.C. Aug. 29, 2023).

6 Courts have repeatedly held sovereign citizen arguments are meritless. *Mackey v. Bureau*  
 7 *of Prisons*, No. 1:15-cv-1934-LJO-BAM, 2016 WL 3254037, at \*1 (E.D. Cal. Jun. 14, 2016);  
 8 *Bendeck v. U.S. Bank Nat’l Ass’n*, No. 17-00180 JMS-RLP, 2017 WL 2726692, at \*5 (D. Haw.  
 9 Jun. 23, 2017); *Williams v. Scheingart*, No. C 15-3013 MMC, 2015 WL 7351388, at \*1 (N.D.  
 10 Cal. Nov. 20, 2015). Therefore, Plaintiff’s claims based on this frivolous legal theory must be  
 11 dismissed.

#### 12 B. Failure to State a Claim

13 Notwithstanding the finding that the entire complaint should be dismissed as frivolous, the  
 14 Court should find that even under a liberal construction of Plaintiff’s complaint, the complaint  
 15 fails to state a cognizable claim.

16 To state a claim under § 1983, a plaintiff is required to show that (1) each defendant acted  
 17 under color of state law and (2) each defendant deprived him of rights secured by the Constitution  
 18 or federal law. *Benavidez v. Cnty. of San Diego*, 993 F.3d 1134, 1144 (9th Cir. 2021) (citing  
 19 *Long v. Cnty. of Los Angeles*, 442 F.3d 1178, 1185 (9th 2006)); *West v. Atkins*, 487 U.S. 42, 48  
 20 (1988). This requires the plaintiff to demonstrate that each defendant personally participated in  
 21 the deprivation of his rights. *Ewing v. City of Stockton*, 588 F.3d 1218, 1235 (9th Cir. 2009);  
 22 *Preschooler II v. Clark Cnty. Sch. Bd. of Trs.*, 479 F.3d 1175, 1183 (9th Cir. 2007).

23 A public defender acts as an advocate for their client and is not considered to be acting  
 24 under color of state law for § 1983 purposes, nor are attorneys appointed by the court to represent  
 25 a defendant in place of the public defender. *See Georgia v. McCollum*, 505 U.S. 42,53 (1992);  
 26 *Polk Cnty. v. Dodson*, 454 U.S. 312, 320-25 (1981). Therefore, Plaintiff cannot state a claim  
 27 under § 1983 that Defendant Revelo, his defense attorney, conspired to and violated his  
 28 constitutional rights.

Next, Defendant Judge Green is entitled to judicial immunity or “quasi-judicial” immunity against any constitutional claims filed under 42 U.S.C. § 1983. The Supreme Court has explained this immunity by reasoning that “a judicial officer, in exercising the authority vested in him, shall be free to act upon his own convictions, without apprehension of personal consequences to himself.” *Bradley v. Fisher*, 80 U.S. 335, 347 (1871). A judge’s errors should be corrected on appeal, not by subsequent civil litigation because civil liability “would contribute not to principled and fearless decision making but to intimidation.” *Pierson v. Ray*, 386 U.S. 547, 554 (1967); *In re Thomas*, 508 F.3d 1225, 1227 (9th Cir. 2007) (per curiam). In fact, judicial immunity is so firmly grounded in jurisprudence that it cannot be defeated by procedural error or malicious, biased, or controversial actions. *Mireles v. Waco*, 502 U.S. 9, 11 (1991) (malicious action does not defeat judicial immunity); *Stump v. Sparkman*, 435 U.S. 349, 359, 363-64 (1978) (procedural error does not defeat judicial immunity); *Ashelman v. Pope*, 793 F.2d 1072, 1078 (9th Cir. 1986) (en banc) (conspiracy and bribery do not defeat judicial immunity); see *Whole Woman’s Health v. Jackson*, 595 U.S. 30, 39 (2021) (state-court judges and state-court clerks are immune from suit in federal court under the Eleventh Amendment). Quasi-judicial immunity also applies to defendants who are not judges but are government officials who play an integral part in the implementation of the judicial function. *Antoine v. Byers & Anderson, Inc.*, 508 U.S. 429, 435 (1993).

There are two exceptions to judicial immunity: (1) allegations arising from “actions not taken in the judge’s judicial capacity,” and (2) judicial actions taken “in the complete absence of all jurisdiction.” *Mireles*, 502 U.S. at 11-12; *In re Complaint of Judicial Misconduct*, 366 F.3d 963, 965 (9th Cir. 2004). A judge acting in “excess of his jurisdiction” still receives immunity “so long as the acts themselves were judicial.” *Rosenthal v. Justices of the Supreme Ct. of Cal.*, 910 F.2d 561, 565-66 (9th Cir. 1990) (citing *Stump*, 435 U.S. at 355-57).

Here, Plaintiff’s allegations against Judge Green all stem from actions he took within the ambit of his judicial capacity and therefore immunity attaches. See (Doc. 1 at 4) (“violated my constitutional rights with no remedy by charging me for a civil action that I was once put in jeopardy for, to force me to repeat this conviction process all over again.”). Furthermore, neither



1 of the exceptions to immunity apply here. As noted, the first exception does not apply because  
2 Plaintiff exclusively challenges Judge Green’s judicial actions. The second exception, a  
3 purported lack of jurisdiction, is also inapplicable here. The instant complaint is premised on  
4 Plaintiff’s arguments that the state court lacks jurisdiction over “Massengale Kevin” and that he is  
5 being sentenced for a misdemeanor violation he already served time. As discussed above, these  
6 arguments, based on sovereign citizen ideology, are frivolous. Accordingly, Judge Green is  
7 entitled to immunity.

8 Defendant Rogers is also entitled to immunity. It is well established that a prosecutor  
9 enjoys absolute immunity from suits for damages when he acts within the scope of his  
10 prosecutorial duties. *See Imbler v. Pachtman*, 424 U.S. 409, 420-24 (1976) (applying immunity  
11 to federal and state claims). Absolute immunity turns on the function of the conduct, not  
12 “whether it was lawful.” *Buckley v. Fitzsimmons*, 509 U.S. 259, 271 (1993); *cf. Torres v.*  
13 *Goddard*, 793 F.3d 1046, 1053 (9th Cir. 2015) (preparing and filing a motion for an arrest  
14 warrant). Moreover, suits against California district attorneys who are acting in a prosecutorial  
15 capacity are considered suits against California. *Del Campo v. Kennedy*, 517 F.3d 1070, 1073  
16 (9th Cir. 2008). The Eleventh Amendment bars suits by citizens against their own state.

17 Like Defendants Revelo and Judge Green, Plaintiff’s claims against Defendant Rogers  
18 revolve around his arrest and the hearings over his failure to appear for a misdemeanor and  
19 subsequent violation of probation hearings. Therefore, the Undersigned finds immunity would  
20 attach to Defendant Rogers because Plaintiff’s claims all arise from actions Defendant Rogers  
21 took with respect to Plaintiff’s criminal case.

22 To the extent Plaintiff seeks to hold Defendants liable for various criminal acts, Plaintiff is  
23 advised no private right of action to assert violations of criminal statutes exists. *See Aldabe v.*  
24 *Aldabe*, 616 F.2d 1089, 1092 (9th Cir. 1980) (holding specific criminal provisions in the United  
25 States Code “provide no basis for civil liability”); *Ellis v. City of San Diego*, 176 F.3d 1183, 1189  
26 (9th Cir. 1999) (“sections of the California Penal Code...do not create enforceable individual  
27 rights”). Unless there is a clear congressional intent to provide a civil remedy, a plaintiff cannot  
28 recover civil damages for an alleged violation of a criminal statute. *Federal Sav. & Loan Ins.*



1 *Corp. v. Reeves*, 816 F.2d 130, 138 (4th Cir. 1987) (where there is no affirmative indication that  
2 Congress intended to furnish a civil remedy, no civil cause of action exists).

3 Plaintiff fails to state a claim for conspiracy against Defendants. A claim of conspiracy  
4 requires specific factual allegations showing two or more persons intended to accomplish an  
5 unlawful objective to cause a plaintiff harm and took some concerted action in furtherance  
6 thereof. *See Gilbrook v. City of Westminster*, 177 F.3d 839, 859-61 (9th Cir. 1999). Thus, the  
7 plaintiff must explicitly allege an agreement between two or more defendants to deprive him of a  
8 constitutional right and conclusory allegations of conspiracy are insufficient to state a section  
9 1983 claim. *Burns v. Cnty. of King*, 883 F.2d 819, 821 (9th Cir. 1989) (per curiam). Conclusory  
10 allegations of conspiracy are not enough to support a section 1983 conspiracy claim. *Id.* An  
11 “agreement or meeting of minds to violate [the plaintiff’s] constitutional rights must be shown.”  
12 *Woodrum v. Woodward County*, 866 F.2d 1121, 1126 (9th Cir. 1989). However, “[d]irect  
13 evidence of improper motive or an agreement to violate a plaintiff’s constitutional rights will only  
14 rarely be available. Instead, it will almost always be necessary to infer such agreements from  
15 circumstantial evidence or the existence of joint action.” *Mendocino Environmental Center v.*  
16 *Mendocino Cnty.*, 192 F.3d 1283, 1302 (9th Cir. 1999). Thus, “an agreement need not be overt,  
17 and may be inferred on the basis of circumstantial evidence such as the actions of the  
18 defendants.” *Id.* at 1301. *See Lacey v. Maricopa Cnty.*, 693 F.3d 896, 935 (9th Cir. 2012)  
19 (“Conspiracy is not itself a constitutional tort under § 1983...[i]t does not enlarge the nature of  
20 the claims asserted by the plaintiff, as there must always be an underlying constitutional  
21 violation”) (internal citations omitted).

22 Here, Plaintiff has only proffered conclusory allegations that Defendants, his defense  
23 attorney, the district attorney, and judge conspired against him to violate his constitutional rights.  
24 Plaintiff has not identified an explicit agreement between two or more defendants. Accordingly,  
25 the Court must dismiss Plaintiff’s conspiracy claim.

26 Similarly, Plaintiff has failed to state a cognizable RICO claim. To state a cognizable  
27 civil RICO claim, a plaintiff must allege facts showing: (1) conduct (2) of an enterprise (3)  
28 through a pattern (4) of racketeering activity (known as “predicate acts”) (5) causing injury to

plaintiff's business or property. *Living Designs, Inc. v. E.I. Dupont de Nemours and Co.*, 431 F.3d 353, 361 (9th Cir. 2005). "Racketeering activity" or "predicate acts" encompass a variety of criminal acts identified in 18 U.S.C. § 1961(1). *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 557 (9th Cir. 2010). To satisfy the "pattern" requirement, there must be at least two acts of racketeering activity within a ten-year period. 18 U.S.C. § 1961(5). Here, Plaintiff has failed to identify a pattern of activity. Instead, Plaintiff's complaint solely focuses on a single event that involved all three Defendants, the criminal hearing that took place on September 7, 2023.

Accordingly, the Court must dismiss Plaintiff's RICO claim.

#### C. Leave to Amend Plaintiff's Complaint Would be Futile

The Court of Appeals has "repeatedly held that 'a district court should grant leave to amend even if no request to amend the pleading was made, unless it determines that the pleading could not possibly be cured by the allegation of other facts.'" *Lopez v. Smith*, 203 F.3d 1122, 1130 (9th Cir. 2000) (en banc) (quoting *Doe v. United States*, 58 F.3d 494, 497 (9th Cir. 1995)). "The decision of whether to grant leave to amend nevertheless remains within the discretion of the district court," which may deny leave to amend if allowing amendment would unduly prejudice the opposing party, cause undue delay, or be futile, or if the party seeking amendment has acted in bad faith. *Leadsinger, Inc. v. BMG Music Publ'g*, 512 F.3d 522, 532 (9th Cir. 2008).

Here, the complaint is not only frivolous because it is rooted in a discredited ideology, Plaintiff fails to allege facts sufficient to state any cognizable claim. Defendants Judge Green and Rogers are entitled to immunity. Similarly, claims against Defendant Revelo, fail as a matter of law because Revelo's actions, as Plaintiff's defense attorney, do not constitute "state action" for purposes of § 1983 claims. These defects cannot be cured by amendment. Therefore, leave to amend should be denied.

#### **Conclusion**

Based on the foregoing, the Undersigned HEREBY RECOMMENDS that

1. Plaintiff's complaint (Doc. 1) be DISMISSED with prejudice and without leave to amend; and
2. The Clerk of the Court be directed to close this case.

1           These findings and recommendations will be submitted to the United States District Judge  
2 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within 21 days after  
3 being served with these findings and recommendations, Plaintiff may file written objections with  
4 the Court. The document should be captioned “Objections to Magistrate Judge’s Findings and  
5 Recommendations.” Plaintiffs are advised that failure to file objections within the specified time  
6 may result in the waiver of rights on appeal. *Wilkerson v. Wheeler*, 772 F.3d 834, 839 (9th Cir.  
7 2014) (citing *Baxter v. Sullivan*, 923 F.2d 1391, 1394 (9th Cir. 1991)).

8 IT IS SO ORDERED.

9           Dated: August 19, 2024

  
UNITED STATES MAGISTRATE JUDGE